

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8265 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

SABARKANTHA DISTRICT CO OP MILK PRODUCERS UNION LTD

Versus

STATE OF GUJARAT

Appearance:

Mr. K. G. Vakharia, with Mr. Tushar Mehta Advocate for the petitiner.

Mr. M.R. Anand, G.P. with Miss Harsha Devani, A.G.P for the respondents.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/03/96

ORAL JUDGEMENT

A short question involved in this Special Civil Application is whether term of the office bearers of the specified cooperative society is coterminous with the term of the Managing Committee.

2. The petitioner Sabarkantha District Cooperative

Milk Producers Union Ltd. is a cooperative society duly registered under the provisions of Gujarat Cooperative Societies Act, 1961 (Hereinafter referred to as "the Act of 1961"). It is a registered cooperative society within the meaning of Section 74C of the Act of 1961. Chapter VII of the Act of 1961 provides for management of the society. Section 73 of the Act of 1961 provides that subject to the provisions in the Act and the Rules, final authority of every society shall vest in the general body of members in general meeting. Section 74 of the Act of 1961 provides that the management of every society shall vest in a committee constituted in accordance with the Act, Rules and the byelaws, which shall exercise such powers and perform such duties as may be conferred or imposed on it respectively by this Act and the byelaws. A proviso was added by the Gujarat Cooperative Societies (Amendment Act, 1981), whereby a provision was made for periodical retirement of the members by rotation. I am told that the said amendment has been struck down by this Court. Section 74C of the Act of 1961 provides that the election of the members of the committees and of the officers by the committee, of the societies of the categories mentioned therein shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter. It is not in dispute that the petitioner - society being Sabarkantha District Cooperative Milk Producers Union is a specified society and is covered under the provisions of Section 74C of the Act of 1961. By the amendment in the year 1981 Chapter XIA which deals with the election of the committees and officers of certain societies was introduced. For the present purpose, Section 145Z only deserves to be referred. There is no provision which straightway provides term of the office bearers or officers of the Managing Committee. However, Section 145Z is one provision which makes provision for the election of the officers of the specified societies. Section 145Z provides that after the election of the members of the committee, whenever election is due, the election of officer or officers of such society shall be held as provided in its byelaws. The petitioner Sabarkantha District Cooperative Milk Producers Union Ltd. has framed the byelaws. Bye-Law 35 provides that the members of the managing committee will elect a Chairman and Vice-Chairman for a period of one year in the meeting of the Managing Committee convened immediately after holding of the Annual General Meeting. It is further provided that Chairman and Vice-Chairman so elected will continue to hold the office of the Chairman and Vice Chairman till next election of the Chairman and Vice Chairman takes place.

3. Election of the members of Managing Committee (Board of Directors) of the petitioner society was held in March 1994 and results were declared on 28-3-1994. In the election all the Directors of Sabarkantha District Cooperative Milk Producers Union Ltd. were elected simultaneously. First meeting of such new committee was convened on 18-4-1994 in which officers of the society i.e. Chairman and Vice Chairman were elected. The say of the petitioner is that the tenure of the officers elected in First meeting held on 18-4-1994 is of the period of 3 years coextensive with the term of the Managing Committee. The grievance of the petitioner is that inspite of the fact that the officers of the society are entitled to continue their full term i.e. upto 17-4-1997, the respondents under political pressure malafidely proceeding to hold election of the officers curtailing their term of appointment.

4. Mr. K.G. Vakharia, Learned Sr. Advocate, appearing for the petitioner submits that as provided under Section 74C(2) of the Act of 1961, the elected officers are entitled to continue for a period of three years. Reading Section 145Z of the Act of 1961, learned Advocate for the petitioner submits that the said provisions contemplates two eventualities for election of the office bearers of the specified cooperative societies. Firstly, after election of the members of Managing Committee and secondly whenever such election is due. It is submitted that so far as second eventuality is concerned, elections are required to be held for electing office bearers whenever such election is due. He has further submitted that the provisions makes it clear that the words "whenever such election is due" are used in the context of and in connection of the earlier words "election of the members of the committee". It is submitted that on true construction of such provision, the office bearers shall be elected after the election of the members of the Committee and such office bearers will continue in office for a period of three years from the date of their election together with the members of the Committee.

5. On the other hand, Mr. M.R. Anand, learned G.P. submits that Section 145Z of the Act of 1961 is to be read with the byelaws of the Society which provides for the term of the office bearers. As per Bye-law 35(4), the members of the Managing Committee who are elected as the office bearers of the Managing Committee are entitled to hold the office as office bearers thereof for a period of one year. Mr. Anand submits that as the election of the office bearers was held on 18-4-1994. The term of

the office bearers i.e. Chairman and Vice Chairman expired on 17-4-1995.

6. In order to better appreciate the rival contentions it will be appropriate to read the relevant provisions i.e. Sections 74C and 145Z of the Act of 1961 and 35(4) of the Byelaws, which reads as under:-

"74C-Provision for conduct of elections of committees and officers of certain societies and term of office of members of committees (1) The election of the members of the committee and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provision of Chapter XI-A and shall be conducted in the manner laid down by or under the chapter

(i) Apex societies mentioned in the Schedule and such other Apex societies as the State Government may by general or special order published in the Official Gazette, from time to time specify in this behalf, having regard to financial position and share capital of such societies)

(ii) all Districts Central Cooperative Banks,

(iii) all Primary Land Development Banks,

(iv) (a) all District Cooperative Sale and Purchase Organizations,
(b) all Taluka Cooperative Sale and Purchase Organizations.

(v) all Cooperative Sugar Factories,

(vi) all Cooperative Spinning Mills,

(vi(a) all district Cooperative Milk unions,

(vi(b) all taluka Cooperative processing societies)

(vii) any other society or class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time specify in this behalf, regard being had to the financial provision and share capital of such institutions,

(2) When the election of all the members of the committee of any such societies held at the same time, the members elected on the committee at such general election shall hold office for a period of (three years) from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

(3) Notwithstanding anything in the byelaws of any such society, the committee of management shall be elected by general body of members of the society and all other committees authorized by or under the byelaws may be constituted by electing or appointing persons from among the persons who are members of committee of management, and all such committee shall be subcommittees of the committee of management, and shall be subordinate to it:

Provided that it shall be lawful for the State Government:

- (a) nominate its representative on a Committee of any such society under Section 80, or
- (b) to nominate the first Committee of Management of any such society where the byelaws of such society so provide)

(Provided further that it shall be lawful for any body or authority to continue its representation on a committee of such society when the byelaws of such society so provide)

"145Z- Special provision for election of officers of specified societies (1) This Section shall apply only to election of officers by members of committees of societies belonging to the categories specified in Sec. 74C.

(2) After the election of the members of the committee or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its byelaws

but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him this behalf."

"35(4) of bye-law:- The members of the managing committee will elect a Chairman and Vice Chairman for a period of one year in the meeting of the managing committee convened immediately after holding of the Annual General Meeting. Chairman and Vice Chairman so elected, will continue to hold the office of the Chairman and Vice Chairman till the next election of the Chairman and Vice Chairman takes place. The Vice Chairman of the Union will function as a Chairman when the Chairman remains absent for a longer time or is out of station or is not in a position to function as Chairman for any other reason and the Vice Chairman would look after day-to-day business of the Sangh. Except this, he will continue to be a member of the managing committee."

7. On reading Sections 73, and 74C of the Act of 1961 makes it clear that the said provision essentially makes provision for conduct of elections and term of managing committees and officers of specified societies. Subsection 1 of Section 74C of the Act of 1961 provides that election of the members of committee and officers of the committees shall be conducted in the manner laid down under Chapter XIA. Subsection 2 of Section 74C of the Act of 1961 provides term of three years period for the members of the committee. The provisions provides that the members elected on the Committee shall hold the office for a period of three years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee. Thus, Section 74C of the Act of 1961 does not provide any term of the officers of the society. Officer of the society is defined under Sub-Section 14 of Section 2 of the Act 1961. Subsection 14 of Section 2 of the Act of 1961 provides that "officer" means a person elected or appointed by a society to any office of such society according to its byelaws, and includes a chairman, vice-chairman, president, etc. Section 145Z of the Act of 1961 deals with the election of the officers of the specified society. Terms of the officers of the society has not been specifically provided by the said provision. Learned Advocate for the petitioner laid emphasis on the words used "whenever such election is due" and has submitted that the first election of the office bearers

are to be held after elections of the members of the committee and thereafter only when such election is due i.e. election of the members of the managing committee. I am unable to agree with Mr. Vakharia. Plain reading of Section 145Z(2) of the Act of 1961, unmistakably lead to the only construction that an election for the purpose of electing the office bearers of the managing committee of the society is required to be held at the first place immediately after the election of the members of the managing committee of any society and thereafter at any point of time whenever such an election of the office bearer becomes due. It becomes due on completion of the term as provided under the Byelaws. Under the Byelaws 35(4) the term of the officer is one year. Mr. Vakharia submits that the term of the election provided in the Byelaws is contrary to the provisions of the Act of 1961 and therefore that cannot prevail. In my view, there is no substance in this contention of Mr. Vakharia. Term of the officer as such has not been provided anywhere in the Act of 1961 and as such the term provided under the Byelaws 35(4) cannot be said to be contrary to the provisions of the Act of 1961. Thus, in my view, term of the officer of the society is not coterminous with the term of the members of the committee and it is of one year as provided under the Byelaws 35(4). I am fortified in my view by the decision of this court in Special Civil Application No.6246 of 1995 decided on 25-7-1995. I am informed by Mr. Vakharia that against the said decision an appeal has been filed which has been registered as Letters Patent Appeal No.473 of 1995 and in the said L.P. Appeal, the Division Bench has directed to stay operation, implementation and execution of the said order. Suffice it to say that precedent can only be in the matter which has been finally adjudicated. I am in complete agreement with the view expressed by S.M. Soni, J., in Special Civil Application No.6246 of 1995.

8. In view of the aforesaid, there is no merit in this Special Civil Application and hence the same is rejected. Notice discharged.

9. Mr. Vakharia, Sr. Advocate, for the petitioner submits that interim relief granted by this Court may further be continued for a period of three weeks. Keeping in view the fact that the Division Bench has granted ad-interim relief and it is considered appropriate to continue the interim relief for further period of three weeks.